

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

RACHIN MONTES,

Plaintiff,

v.

**METRO MATERIALS AND
MACHINERY, LLC,**

Defendant.

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CIVIL ACTION NO. 6:18-CV-00367-RWS

**ORDER ADOPTING REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

The above entitled and numbered civil action was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. On October 12, 2018, the Magistrate Judge issued a Report and Recommendation (Docket No. 11) recommending that Plaintiff Rachin Montes's Motion for Default Judgment (Docket No. 10) against Defendant Metro Materials and Machinery, LLC be granted. Docket No. 11 at 7. The Magistrate Judge further ordered that the Report and Recommendation be immediately served on Defendant. *Id.* On November 13, 2018 Plaintiff filed a notice of service of the Report and Recommendation on Defendant on November 8, 2018. Docket No. 14. The Report and Recommendation informed the parties of their rights to object to those findings within 14 days, and further informed the parties that a failure to timely object "shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court." Docket No. 11 at 7 (citing *Douglass v. United States Auto. Ass'n*,

79 F.3d 1415, 1430 (5th Cir. 1996)). Since the service of the Report and Recommendation on November 8, 2018, neither party has filed objections and the prescribed time period for doing so has passed.

Nonetheless, having reviewed the Magistrate Judge's findings, the Court agrees with the Magistrate Judge. The Magistrate Judge found that Defendant was properly served (Docket No. 5), that Defendant has failed to timely answer or otherwise respond, and that the Clerk of Court has made an entry of default (Docket No. 9). Docket No. 11 at 3. The Magistrate Judge also found that Plaintiff's Complaint sufficiently plead his cause of action for violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 206(a), 207(a) (Docket No. 1 at ¶¶ 8–36), and that Plaintiff's Complaint makes a *prima facie* showing of jurisdiction (Docket No. 1 at ¶¶ 4–5). Docket No. 11 at 3. Weighing the relevant considerations, the Magistrate Judge then found that Plaintiff was entitled to default judgment. *Id.* at 3–4. The Court finds no plain error in these determinations.

The Magistrate Judge further found that Plaintiff is entitled to damages as supported by his sworn declaration. *Id.* at 4 (citing Docket No. 10-1). Specifically, the Magistrate Judge found that Plaintiff was entitled to his uncontested back wages in the amount of \$3,901.50, as well as an equal amount in liquidated damages as provided by statute. Docket No. 11 at 5 (citing 29 U.S.C. § 216(b); *Murphy v. ABA Ranch, LLC*, No. 4:17- CV-00215, 2018 WL 3656480, at *6 (E.D. Tex. Aug. 2, 2018) (awarding liquidated damages as mandatory under § 216(b) where defendant failed to plead and prove good faith)). Using the "lodestar" method, the Magistrate Judge then determined that Plaintiff was entitled to \$2,860.00 in attorney's fees. *Id.* at 6. Finally, the Magistrate Judge found that Plaintiff is entitled to costs in the amount of \$437.75,

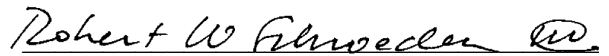
representing the costs of filing and service of process. *Id.* at 7. The Court similarly finds no plain error in these determinations.

Accordingly, Plaintiff's Motion for Default Judgment (Docket No. 10) is **GRANTED**. It is hereby

ORDERED that Plaintiff be awarded \$3,901.50 in unpaid wages, \$3,901.50 in liquidated damages, \$2,860.00 in attorney's fees, and \$437.75 in costs. It is further

ORDERED that Plaintiff shall immediately serve a copy of this Order and corresponding final judgment on Defendant.

SIGNED this 7th day of January, 2019.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE